

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 13269 of 2004

Between:

Pentapati Tirumala, D/o. Sri P. Krishna, W/o. Sri S. Srinivas, OCC: Lecturer in
Commerce, M.R.A. College, Vizianagaram, R/o. 2-11-13, Vulli Veedhi,
Vizianagaram.

..... PETITIONER

AND

- 1 State of Andhra Pradesh, Rep by its Secretary to Government,
Higher Education Department, Secretariat Buildings, Hyderabad.
- 2 The Commissioner of Collegiate Education, Government of
Andhra Pradesh, Nampalli, Hyderabad.
- 3 The Regional Joint Director, Collegiate Education, Rajahmundry
- 4 M.R.A. College, Vizianagaram rep by its Correspondent

.....RESPONDENTS.

Petition under Article 226 of the Constitution of India praying that in the
circumstances stated in the Affidavit filed herein the High Court may be pleased to
grant any Writ, direction or orders more particularly one in the nature of Writ of
mandamus by declaring the action of the respondents in not regularizing the
services of the petitioner as Lecturer Commerce in fourth respondent college, as
illegal, arbitrary, unreasonable consequently direct the respondents to regularize the
service of the petitioner Lecturer with effect from her date of her joining with all
consequential benefits.

Counsel for the Petitioner: MR.K.V.SIMHADRI

Counsel for the Respondent Nos. 1 to 3: GP FOR HIGHER EDUCATION

Counsel for the Respondent No.4: Mr. D.V.SITHARAMA MURTHY.

The Court made the following :

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THE HON'BLE SRI JUSTICE B. PRAKASH RAO

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WRIT PETITION NO.13269 OF 2004

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ORDER:

Heard Sri K.V.Simhadri, learned counsel for the petitioner and learned Government Pleader for Higher Education appearing for the respondents 1, 2 and 3 and also Sri D.V.Sitharam Murthy, learned counsel appearing for the fourth respondent.

Having heard two vacate stay applications filed on behalf of the respondents and at the request of both the parties, the main writ petition is taken up for disposal.

The petitioner, who is working as a Lecturer in Commerce Department with the fourth respondent, files this writ petition, *inter alia*, seeking for a writ of Mandamus to declare the action of the respondents in not regularizing the services of the petitioner in the said post as illegal, arbitrary and unreasonable and also for further direction to

regularize her services.

The claim of the petitioner rests on the facts that she was appointed as a part time Lecturer in Commerce Department with the fourth respondent College with effect from 02.08.1999 and she has been discharging the work load of more than 20 hours per week. She is teaching for B.Com. classes of all the years and being paid consolidated pay of Rs.1,400/- per month and also depending on the work load. She is contributing to P.F. schemes. However, the fourth respondent, with a break in every summer, is asking the petitioner to join service in the next academic year, thereby she is continuously discharging the work as such all along. According to her, vacancies were caused in the aided posts on account of the retirement of Sri B.L.N.Rao, Sri Y.Vishnu, Sri B.B.Rao and Sri P.Krishna and after filling three vacancies, still there exists one vacancy. In view of the work load and exigency, necessarily the petitioner has to be continued and in view of her long service, her case requires to be considered for regularization. Further, it is also pointed out that apart from attending classes, she is being asked to attend the duties of Examiner for B.Com., valuation work as and when entrusted by Andhra University and also she was shown as eligible Examiner during the year 2003 and she also attended as Practical Examiner of B.Com (Computers) Examinations at M.S.N.Degree College, Vizianagaram and attended the spot valuation also. Therefore, she is virtually discharging her duties as a regular employee and there is no reason as to why she would not be given due recognition. It is further contended that having regard to the vacancy caused as a result of retirement of one G.L.Narayana Rao with effect from 31.07.2004, her case can as well be considered in the said aided vacancy. In spite of the same, the respondents are not considering the petitioner's case even though she is fully eligible and qualified to be regularized in the said post. According to her, she passed B.Com., with first class, M.Com., in second class with 58% and also Law with second class and acquired qualification of DPCS. Apart from that, she is also entitled for the benefits as directed under G.O.Ms.No.328 Education (CE.III) Department, dated 15.10.1997 for regularization of part time Lecturers and therefore, even otherwise the petitioner is entitled to the benefits as can be sought under G.O.Ms.No.302, dated 23.08.1991 in all aspects, the same applies to her case also. Hence, the writ petition.

In the counter affidavit filed on behalf of the fourth respondent, the allegations as

made by the petitioner are sought to be denied especially as to the existence of any enforceable right to seek the relief of regularization under Article 226 of the Constitution of India. It was further contended that the petitioner has approached this Court by suppressing the facts that she was appointed only on a contract basis and also undertaking given by her that she would not claim any right of continuation. Further it was also pointed out that the petitioner's appointment is only as a part time Lecturer in Commerce Department but not after following due process of selection in terms of the Recruitment Rules as prescribed by the Department and the said appointment is being only a stop gap and on adhoc basis, no right can be claimed by the petitioner. Further, it was pointed out that in regard to the vacancies caused on the retirement of Sri B.L.N.Rao, Sri Y.Vishnu, Sri B.B.Rao and Sri P.Krishna, it was stated that the State Government has not granted permission to fill up any such vacancies except the back log of Scheduled Castes and Scheduled Tribe vacancies. Further, a reference was made in regard to Sri K.V.Venkata Raju, Sri Etheeswar Rao and M.Srikanth, stating that their appointments were much prior to that of the petitioner and therefore the petitioner cannot be in any way compared with them. Further it was also pointed out that having regard to the proceedings of the 2nd respondent dated 06.08.2004, it is instructed that 3 sections of B.Com.,(Telugu medium) are to be merged into 2 sections for the current year 2004-2005, the question of workload does not arise. In view of the same, it was pointed out that there are several other part-time lecturers, who secured higher percentage than the petitioner and there are several other highly qualified persons on the rolls of employment exchange who are also entitled to compete for selection , the petitioner cannot make any such claim. Further in view of amendment to Section 7 and insertion of new provision therein to the A.P. (Regularisation of Appointments to Public Service and Rationalisation of Staff Pattern and Pay Structure) Second Amendment Act 1998, the petitioner cannot make any claim. Hence, the writ petition is not maintainable. Further, even on the date of the G.O. on which the petitioner sought to place reliance, she was not in service, therefore, no right as such is conferred.

In the counter affidavit filed by the respondents 1 to 3, self same allegations are being re-iterated and further it was also their case that the petitioner does not fall well within the mischief as contemplated under G.O.Ms.No.302, dated 23.08.1991 or 328 dated 15.10.1997. Further, it is also contended that having regard to the

instructions issued against all the Managements of Private Aided Colleges, there could not have been any such appointments on part-time basis nor would it create any right.

Considering the submissions made from both the sides, the only question which comes up for consideration is as to whether the petitioner's claim for regularization of her services with the fourth respondent herein, is valid ?

From the above, there is no dispute to the fact that the petitioner is admittedly appointed as a part-time Lecturer with a break in every summer. Admittedly, it is not out of any regular selection process. The petitioner, in fact, was trying to lay more stress on the directions given by the State Government in G.O.Ms.No.302, dated 23.08.1991 and at which point of time, the petitioner was not in service nor her claim is well within the norms as contained therein. Even otherwise the subsequent G.O.Ms.328, dated 15.10.1997 also would not come to the aid of the petitioner. According to the fourth respondent, there are several similar such part-time Lecturers, who secured higher percentages and also higher qualifications than the petitioner and who have been appointed much earlier to the petitioner, are still continuing as such. Therefore, the petitioner cannot be treated any difference over them. On a totality of the facts and circumstances, it is seen that the petitioner's appointment is not a regular one nor within the selection process. Even otherwise, the petitioner herself has joined the services by giving an undertaking that she would not claim any right under such appointment. Be that as it may, there being no such regular appointments or regular selection process, the instructions as sought to be relied cannot come to

any rescue of the petitioner. Though a reliance was sought to be placed on the directions given by this Court in the facts and circumstances of the case in W.P.No.27295 of 1998, dated 10.07.2002, the same also would not come to the aid of the petitioner in view of the facts of this case. However, it is needless to mention that as and when the Management comes with earlier proposal for recommending the regularization on par with similarly placed employees, the petitioner's case has to be certainly come up for consideration. However, the petitioner alone cannot stand to seek any such relief *dehors* the names of the several similarly placed employees, who have far better chances than that of the petitioner. Hence, I do not find any merits in the writ petition.

The writ petition is, accordingly, dismissed. No costs.

B. PRAKASH RAO, J

7th February 2005.

Chvn.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER.

To

- 1 The Secretary to Government, State of Andhra Pradesh,
Higher Education Department, Secretariat Buildings, Hyderabad.
- 2 The Commissioner of Collegiate Education, Government of
Andhra Pradesh, Nampalli, Hyderabad.
- 3 The Regional Joint Director, Collegiate Education, Rajahmundry
- 4 The Correspondent, M.R.A. College, Vizianagaram.
5. Two C.Cs. to the G.P. for Higher Education, High Court Buildings,
Hyderabad (OUT).
6. Two C.D. copies.